

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

DAVID LANEY and SANDY LANEY,
Attorneys in fact for SHANNON LANEY,

Plaintiffs,

vs.

SCHNEIDER NATIONAL CARRIERS,
INC., et al.,

Defendants.

Case No. 09-CV-389-TCK-FHM

OPINION AND ORDER

Plaintiffs' Motion to Strike Defendants' Witnesses [Dkt. 124] is before the undersigned United States Magistrate Judge for decision.

Plaintiffs invoke the court's inherent power to manage and control proceedings and seek an order striking 5 expert witnesses disclosed by Defendants for the first time on October 1, 2010. Plaintiffs also seeks to strike generically identified witnesses. According to Plaintiffs, identifying new witnesses at this late date in the litigation demonstrates bad faith conduct as required for exercise of the court's inherent powers.

A Revised Scheduling Order was entered on August 8, 2010. That Order set October 1, 2010 as the deadline for "Witness Lists and Proposed Exhibits," and November 1, 2010, as the deadline for "Expert Identification and Reports under FRCP 26(a)(2)." [Dkt. 114]. On October 1, 2010, Defendants served their witness list which identified five previously undisclosed expert witnesses. Since the Revised Scheduling Order set the deadline for identification of expert witnesses on November 1, 2010, and Defendants' experts were identified a month before that date, the undersigned cannot conclude that the naming of those witnesses constitutes bad faith. Further, the undersigned observes that

the Revised Scheduling Order has been in effect since August, the dates contained therein have been equally available to all parties, and no objection was made to the Revised Scheduling Order as being inconsistent with the rationale contained in the motion seeking revision of the schedule. Since the discovery period has not ended, it is premature to consider striking Defendants' generically identified witnesses. The harm which Plaintiff fears, the naming of new witnesses in the final witness list up to one week before trial, has not occurred. The undersigned finds, therefore, no basis for granting Plaintiffs' motion to strike Defendants' witnesses.

Plaintiffs' Motion to Strike Defendants' Witnesses [Dkt. 124] is DENIED.

SO ORDERED this 17th day of November, 2010.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE